

BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI

INTERNATIONAL BROTHERHOOD	)	
OF ELECTRICAL WORKERS, LOCAL 753,	)	
	)	
Petitioner,	)	
	)	
v.	)	Public Case No. R 97-022
	)	
CITY OF WEST PLAINS,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of International Brotherhood of Electrical Workers, Local 753 (hereinafter referred to as the Union) to represent certain employees of the City of West Plains (hereinafter referred to as the City). A hearing on the matter was held on April 22, 1997 in West Plains, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Chairman Francis Brady, employee member LeRoy Kraemer and employer member Linda Cooper. At the hearing the parties were given full opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board sets for the following Findings of Fact, Conclusions of Law, Order, and Direction of Election.

**FINDINGS OF FACT**

The City of West Plains has a population of approximately 10,000 people. As part of its governmental functions, the City operates a Department of Public Works (hereinafter DPW). It is the City's largest department. That department consists of the following 14 areas which are also

known as departments: Electric, water, sewer, street, refuse, refuse disposal, recycling, engineering, construction, engineering construction, shop, cemetery, scales, and waste water treatment plant. Over 80 employees work in the foregoing areas/departments.

The City also operates other departments which are completely separate from the DPW. The non-DPW departments relevant to this case are as follows: City hall, park grounds, golf course, building inspection, transit, airport, and civic center. Over twenty employees work in these areas/departments, excluding city hall. This case involves all the DPW and non-DPW departments and areas referenced above.

There are four main job classifications in the departments just referenced. The biggest job classification in terms of number of occupants is the position of operator. There are 35 operators, with most being classified as equipment operators. Operators work in numerous city departments. The second biggest job classification in terms of number of occupants is the position of laborer. There are 22 laborers. Like the operators, laborers work in numerous city departments. Next, there are two classifications with nine occupants each: linemen and foremen. All the linemen work in the electric department. The foremen work in some, but not all, of the DPW's departments. The status of all nine foremen is in issue herein. Finally, the remainder of the job classifications for the departments just referenced have several occupants each and will be identified later in the Findings of Fact.

The DPW's organizational structure is as follows. The department is headed by Jim Davidson. He is both the public works director and electric superintendent. He reports to Royce Fugate who is the city administrator and (city) engineer. Most DPW departments have a department head. The department head reports to Davidson. Underneath the department head are the foremen. Underneath them are the operators and laborers.

The DPW's 14 departments/areas will now be reviewed. They will be addressed in the order previously listed.

The electric department operates the City's electric utility which provides 95% of the City's electricity. The head of the department is Jim Davidson who, in this capacity, functions as the electric superintendent. Directly subordinate to Davidson are two foremen: Melvin Barks and Steven Johnson. Both were linemen in the department prior to becoming foremen. Barks is the City's most senior foreman. Johnson has been a foreman twice; the most recent time for two or three years. Each foreman is in charge of a five man crew of linemen (which includes themselves). These crews construct, maintain, and repair electric lines.

The water and sewer departments are headed by Sam Gunter, whose title is water and sewer supervisor. Carl Morgan is the foreman for the water department and oversees a crew of four employees (which includes himself). Jerry Bean is the foreman for the sewer department and oversees a crew of five employees (which includes himself). Although Morgan's crew usually does the installation work and Bean's crew usually does the maintenance work, these crews and their foremen are interchangeable. Both crews deal with underground pipes, repair leaks, do maintenance work, install new lines, and use the same type of equipment. Thus, as a practical matter, the water and sewer departments operate as one department.

The employees in the street department maintain the City's streets. The street department is headed by Charles Tharp who also heads four smaller DPW departments: Construction, cemetery, scales, and the shop. Since the street department is the largest of the departments which he oversees, Tharp spends most of his time with it (i.e. the street department). Joey Owens is the foreman in the street department. He oversees a crew of nine full-time employees (plus himself). One of the employees in Owens' crew is a street sweeper who works a different shift than Owens does. Since they work different shifts, Owens never sees that

employee even though he is a member of his (Owens') crew. Tharp supervises the department's three part-time employees.

The refuse, refuse disposal, and recycling departments are headed by Dennis Sloan. There are no foremen in these three departments. The person who is nominally in charge of each department's work crew is a leadman. The leadman in the refuse department is equipment operator James Mayfield. Twelve employees, including Mayfield, work in that department. The leadman in the refuse disposal department is not identified in the record. Three employees, including the leadman, work in that department. The leadman in the recycling department is Fred Sympton. Five employees, including Sympton, work in that department.

The City's engineering department headed by Wes Parks. He supervises the other three employees who work in that department: Raymond Birdsong, Trent Albin, and Jeff Coats. Birdsong is the department's right-of-way agent. He has no regular work hours but instead works only on an "as-needed" (generally 16 to 40 hours a week). Birdsong is not listed on the City's pay plan. Albin is the department's rodman. He also works part-time (generally 20 to 25 hours a week). Albin is a student whose work hours are determined by his class schedule. Coats is the department's draftsman and only full-time employee. None of the three are engineers nor do any of them have engineering degrees; rather, they are engineering technicians.

The construction department is responsible for a variety of construction-related tasks. Specifically, it handles curbs and gutters, concrete work, painting, and building maintenance. As previously noted, the department head is Charles Tharp (who also supervises the street department, the scales department, the shop, and the cemetery). The foreman for the construction department is Bobby Haeffner. He oversees the two other employees who work in that department: A carpenter and an equipment operator.

The engineering construction department is separate and distinct from both the engineering department and the construction department. The head of the engineering construction department is Wes Parks. The foreman for the department is Norman Cole. He oversees the two other employees who work in that department, a laborer and an equipment operator. The engineering construction crew works closely with the construction crew.

The City's maintenance shop is in a separate building from the city hall complex. The employees at the shop service and repair the City's vehicles. As previously noted, the department head is Charles Tharp (who also supervises four other DPW departments). The foreman for the shop is Doyle Richardson. He oversees the two mechanics who work with him at the shop. Richardson buys the parts and equipment needed to repair vehicles. He either buys the items himself or sends a mechanic to get it. Richardson can purchase items costing under \$500 without prior approval; he needs to get approval from Tharp for items costing over \$500.

The City operates a city cemetery. As previously noted, the department head is Charles Tharp (who also supervises four other DPW departments). Tharp visits the cemetery two to three times a week. The foreman for the cemetery is Larry Coffman. His official job title is sexton. Coffman oversees the two other employees who work at the cemetery: A laborer and an equipment operator.

The scales department is headed by Charles Tharp who, as previously noted, heads four other DPW departments. The scales department is the smallest DPW department and also the smallest department which Tharp heads. It is essentially a one-man department, with the one man being Birvon Strong, the scales operator.

The City's waste water treatment plant is headed by Jim Woodward. There is no foreman in this department. Woodward supervises the other three employees who work there, all of whom are equipment operators.

Having reviewed the DPW's departments, attention is now turned to the non-DPW departments at issue herein. The following non-DPW departments constitute some, but not all, of the City's remaining departments.

The park grounds department maintains the City's park grounds. The department is headed by Jerry LaFevers. Six other employees besides LaFevers work in that department: An assistant director, a recreation supervisor, a maintenance supervisor, and three laborers. The maintenance supervisor oversees the three laborers.

The golf course department maintains the City's golf course. The department is headed by Kevin Alsup. He supervises the other six employees who work in the department: Two pro-shop workers, three laborers, and a groundskeeper.

The City's airport department operates the municipal airport. The department is headed by Jack Bowman. He supervises one employee, Richard Rhodes, who is a laborer. Rhodes status is not in issue here because the City does not seek his inclusion in any bargaining unit and the Union does not seek his inclusion either.

The City employs two meter readers: Shawn Handrix and Roger Pendergrass. They read the utility customers' meters for billing purposes. They spend two to three weeks a month in the field reading meters. After they are finished reading meters for the month, they work at the front desk of the city hall complex where they download their hand held computers to the office mainframe computer for utility billing. While working in the office they also wait on customers at the counter, write work orders, do service deposits, and do filing. The meter readers are supervised by the utility billing supervisor, John Lambe.

The City's only custodian is Wesley Miller. He cleans the city hall complex and the police and fire station. For pay purposes, Miller is classified as a laborer II. Miller's supervisor is Dave Hoglen, the City's purchasing agent.

The City's warehouse is part of the city hall complex. It is where items used by various city departments are stored. The City's purchasing agent, David Hoglin, orders all these items. Hoglin supervises Norman Collins, the warehouse/inventory clerk. Collins' work station is located in Hoglin's office which is adjacent to the warehouse. Collins' desk has a computer which is connected to the main office central unit. His duties include daily invoicing (which involve putting invoices into a computer for accounts payable), maintaining the inventory on computer, receiving and stocking inventory, tracking incoming shipments and usage, checking requisitioned items out of the warehouse, stocking the warehouse and removing items from the warehouse for pick up, and operating a forklift. Collins has daily contact with both DPW and non-DPW crews in checking out inventory. Overall, Collins spends about 25% of his time in the warehouse doing warehouse related duties and 75% of his time in the city hall complex doing invoice related duties. Collins works with the city hall office staff on a daily basis. Collins attends weekly office staff meetings along with the city clerk, the utility billing supervisor, the two city bookkeepers, the payroll clerk, and the city administrator.

The building inspection department has just one employee, Bobby Bridges, who is the building inspector. He issues building permits and is the City's code enforcement official. Bridges is a salaried employee. Both parties want Bridges excluded from any bargaining unit, but on different grounds: The City on the basis that he is salaried and the Union on the basis that he lacks a community of interest with the DPW employees. Thus, his status is not in issue herein.

The City operates a civic center. The civic center director is Bob Burdett. He supervises the other five employees who work there: A business manager, a box office manager, two building engineers and a groundsman.

The City's transit department provides bus transportation to city residents. The department is headed by Ron Hunter. The department has three employees: Hunter, Richard

Harris, and Carmen Wilson. All three are classified as transit (bus) drivers. Hunter is the department's only full-time employee, Harris works two hours a day, and Wilson works only as a fill-in.

The employees in the departments referenced above can be transferred from one department to another. For example, an employee in refuse disposal recently transferred to the golf course. Additionally, employees in the departments referenced above can bid for job openings outside their existing department if they want.

Attention is now turned to the record evidence concerning the foremen. At the beginning of each work day, most of the department heads meet with their foremen and give them their daily job assignments. Some of these job assignments are given orally while others are given in writing. When the job assignments are given in writing they are called work orders. Usually the foremen do not change their job assignments after receiving them. On occasion though, foremen change their job assignments if they feel the circumstances warrant. An example of same would be if the weather suddenly prevented a crew from finishing their outside work. After the foremen have received their job assignments from the department head, they (the foremen) and their crew proceed to the job site (if applicable) to do the work in question. The foremen then assign the employees on their crew or in their department to do whatever tasks need to be done. Thus, the foremen assign work to their crew or department members. For example, if a crew is cutting tree branches, the foreman decides who works in the bucket cutting branches and who works on the ground. After the work assignments are made, the foremen oversee the work which their crew members do and ensure that it (the work) is performed correctly. If a question arises at the job site about the work to be performed, the foreman answers it. If a foreman cannot answer the question, they consult with the department head concerning same. If a mistake is made performing the work, the foreman either corrects it themselves or directs someone else to correct



it. The foremen are in charge of the job site and the safety of the work crew. If additional equipment is needed to perform the work, a foreman can direct a crew member to go get it. When a foreman directs a crew member to do something, they usually do it. If there is an on-the-job dispute between workers, the foreman can resolve it. The number of employees which each foreman oversees varies from a low of two to a high of nine. During the course of the day, the foremen work side by side with their crew or department members doing the same work as them. The amount of time which the foremen spend doing hands-on work as opposed to doing other things varies depending on the foreman in question. Melvin Barks, who as previously noted is the City's most senior foreman, spends about 25% of his time doing hands-on work alongside his crew members. The remaining eight foremen spend about 90% of their time doing hands-on work alongside their crew or department members.

In addition to doing hands-on work and checking on the work performed by their crew or department members, the foremen have the following job responsibilities: They train new employees, they call employees into work in emergencies, and they complete the following work records. First, they keep the time records for the employees on their crew or those in their department. This involves tracking their hours of work and their compensatory time, vacation and/or sick leave usage. The employees are paid based on the time records kept by the foremen. Second, the foremen keep records which identify the jobs which employees worked on. Third, the foremen track vehicle usage.

All the foremen were initially hired into entry level positions in their departments and, over time, worked their way up to the position of foreman. All of the foremen are among their department's more senior members.

Two foremen have their own office: Larry Coffman at the city cemetery and Doyle Richardson at the shop. The rest of the foremen do not have their own office.

Every Monday morning, the City holds supervisory meetings. The individuals who attend these meetings are the DPW director (Davidson), the water superintendent (Gunter), the street superintendent (Tharp), the building inspector (Bridges), the purchasing agent (Hoglin), the park grounds director, the airport director, the sanitation supervisor, and the waste water treatment supervisor. None of the foremen attend these meetings.

The DPW foremen annually evaluate their crew or department members. This is the only written evaluation the employees receive. The evaluation process works as follows. The foremen fill out a preprinted form by rating the employee's job performance in eleven areas using a scale which ranges from 1 (unsatisfactory-the lowest rating) to 5 (outstanding-the highest rating). After a numerical rating is assigned to each of the eleven areas a total score is figured. For example, a score of 3 (average) in each of the eleven areas would generate a total score of 33 points. In order to qualify for a yearly pay increase, employees must receive a score of at least 33 points. The evaluation form also contains a blank space wherein the rater can make written comments. The foreman fills out this evaluation form without first talking with their department head. What happens next in the process varies from foreman to foreman. Some foremen first sit down with the employee and go over the completed evaluation with them, and then later submit the completed evaluation to the department head for review. Other foremen instead first sit down with the department head and go over the completed evaluation with them. Either way, the department head usually accepts what the foreman has written and does not make changes. The foreman and the department head then sign the evaluation form. The evaluation is then sent to the DPW director and the city administrator who also review it and sign it. A foreman can recommend on the evaluation form that an employee's classification status be changed. For example, a foreman can recommend that a laborer II move to a laborer III. The foreman's recommendation in this regard is then reviewed by the city administrator who makes the final

decision concerning same. If an employee's status is changed in this fashion, they move into a higher pay grade. The city administrator also decides if the employee receives a pay increase.

The City's hiring process usually works as follows. In the DPW, Davidson reviews the job applications that are received and decides who to interview. He then schedules an interview with the applicant and personally conducts the interview with them. On some occasions, the department's foremen have participated in these interviews. Usually though, foremen do not participate in same. After the interviews are completed, Davidson sometimes asks the department's foreman whether they know the individual being considered for employment and, if they do, whether they can work with them. On some occasions, foremen have talked to the job applicant to determine if they could get along with them if the individual was hired. On two occasions, foreman Barks has recommended to Davidson that a particular individual be hired. Davidson then recommends a finalist to the city administrator, who makes the final decision regarding hiring.

With regards to discipline, foremen are not empowered to suspend or discharge employees on their own volition and have not done so. This responsibility rests with the city administrator. Only one foreman has ever recommended that an employee be fired. In that instance, the street department foreman's recommendation was not followed and the employee was not fired. No foreman has ever issued a written warning to an employee. If a foreman believes that an employee's conduct is inappropriate, they report the matter to their department head who, in turn, reports it to Davidson (if applicable). Any discipline which is ultimately imposed on the employee would come from the DPW director and/or the city administrator--not the foreman.

Non-salaried (i.e. hourly) city employees are paid pursuant to the City's pay plan. Under this system, each classification is assigned to a pay grade. Each pay grade, in turn, incorporates

twelve steps. Employees normally advance one step a year but in some circumstances can advance two steps a year. Employees are paid pursuant to their classification. For example, all laborer IIs are on the same pay grade, regardless of what department they work in. The hourly pay range for a meter reader is \$5.51 to \$9.30, depending on step position. The hourly pay range for a warehouse clerk is \$5.68 to \$9.61, depending on step position. The hourly pay range for a service lineman is \$6.74 to \$11.38, depending on step position. The hourly pay for a lineman is \$7.28 to \$12.32, depending on step position. The hourly pay for an apprentice lineman is \$6.36 to \$10.75, depending on step position. The hourly pay for a groundsman is \$5.98 to \$10.10, depending on step position. The hourly pay for an equipment operator I is \$5.49 to \$9.25, depending on step position. The hourly pay for an equipment operator II is \$5.85 to \$9.87, depending on step position. The hourly pay for an equipment operator III is \$6.21 to \$10.48, depending on step position. The hourly pay for a draftsman is \$5.93 to \$9.99, depending on step position. The hourly pay for a rodman is \$6.00 to \$9.24, depending on step position. The hourly pay for a mechanic is \$5.85 to \$9.87, depending on step position. The pay for a carpenter is \$5.85 to \$9.87, depending on step position. The hourly pay for a recreation supervisor is \$6.50 to \$10.93, depending on step position. The hourly pay for a (recreation) maintenance supervisor is \$5.85 to \$9.87, depending on step position. The hourly pay for a greenkeeper is \$6.50 to \$10.93, depending on step position. The hourly pay for a bus driver is \$5.85 to \$9.87, depending on step position. The foremen are salaried and are not paid pursuant to the pay plan just referenced. The hourly pay for the foremen, when converted to an hourly rate, is as follows: Barks and Johnson are each paid \$16.02, Morgan and Bean are each paid \$10.97, Cole is paid \$9.00, Owens is paid \$10.50, Coffman is paid \$11.25, Haeffner is paid \$12.30, and Richardson is paid \$10.10. Eight of the foremen are paid more than the workers on their crew. In the street department, one senior equipment operator makes 40 cents an hour more than the street

foreman does. All hourly employees are eligible for overtime pay; salaried employees are not. When the existing foremen pay rates were established several years ago, \$1,500 was built into their annual salary to compensate them for the fact that they do not receive overtime.

### **CONCLUSIONS OF LAW**

In our view, there are two main issues to be decided in this case: 1) the composition of the bargaining unit; and 2) whether the nine DPW foremen should be excluded as supervisors from any bargaining unit. These issues, along with various subissues that are subsumed therein, will be addressed below. Any matter not specifically addressed the following discussion has been deemed to lack sufficient merit to warrant comment.

### **DISCUSSION CONCERNING APPROPRIATE UNIT**

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986 wherein it provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500 (1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest", nor does it set out any criteria as to the means to be used by the Board in resolving such issues. That being so, this Board long ago created its own criteria for determining whether the employees involved have a community of interest. The criteria, as set forth in AFSCME, Missouri State Council 72 v. Department of Corrections and Human Services, Case No. 83-002 (SBM), and other cases, are:

1. Similarity in scale or manner of determining earnings;
2. Similarity in employment benefits, hours of work, and other terms and conditions of employment;

3. Similarity in the kind of work performed;
4. Similarity in the qualifications, skills, and training of employees;
5. Frequency of contact or interchange among the employees;
6. Geographic proximity;
7. Continuity or integration of production processes;
8. Common supervision and determination of labor-relations policy;
9. Relationship to the administrative organization of the employer;
10. History of collective bargaining; and
11. Extent of union organization.

We use these criteria as a means of assessing whether the employees participate in a shared purpose through their employment and whether they share similar interests. However, the application of these criteria on a case-by-case approach does not produce hard and fast rules of universal applicability. For example, in some cases one of the criteria will take on paramount significance, while in other cases another criteria may predominate.

Before applying the above-noted factors to the record evidence, we have decided to make the following preliminary comments.

First, our role in making bargaining unit determinations is not to decide which proposed unit is “the” appropriate unit or “the most” appropriate unit. Instead, our duty in all election cases is to decide whether a proposed unit is “an” appropriate unit.<sup>1</sup> This distinction is important because it means that the Petitioner does not have to request an election in the most appropriate unit that could be envisioned, either by the parties themselves or this Board. This Board has interpreted Section 105.525 to mean that there is a need for a mix of bargaining units which afford employees the opportunity to be represented in workable units by unions of their own choosing, which may reasonably be expected to be concerned with the unique interests and aspirations of

the employees in said unit. We recognize that a balance must be struck between this need and an unreasonable number of bargaining units. It is for that reason that the Board examines the facts of each case to determine whether the particular bargaining unit being sought is appropriate.

Second, we have decided to comment on the fact that the City cited NLRB cases as authority for their position herein. While we have looked in the past, and will continue to look in the future, to NLRB cases where the issues being addressed are of first impression for this Board, that is not the case here. This Board has decades of experience making unit determination decisions and deciding supervisory status. That being so, it is unnecessary for us to rely on NLRB cases in reaching the instant decision.

That said, we now turn to the question of what unit is appropriate. In this particular instance, this presents a tough call.

We begin our analysis by reviewing the Union's proposed unit. The Union's proposal unit is as follows:

All full time and regular part-time employees of the Public Works Department (including all employees in the areas described: Electric, warehouse, water, sewer, refuse, refuse disposal, recycling, engineering construction, construction, street, cemetery, scales, shop, sanitation, sewer, carpenter) which includes laborers, operators, drivers, apprentices and journeymen, working foremen and mechanics.

The Union's proposed unit specifically names the following as exclusions:

All office clerical, administration, directors, supervisors, fire department, police department, park department, golf department and recreation department.

There are about 80 employees in the Union's proposed unit.

The first line in the Union's proposed unit description (i.e. "all full-time and regular part-time employees of the Public Works Department...") makes it appear that the Union is proposing a pure DPW unit. If the Union's proposed unit was a pure DPW unit, we would have no trouble finding it appropriate. Such units are commonplace and usually pass muster as being appropriate. Here,

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<sup>1</sup> City of Poplar Bluff, Case No. UC 90-030 (SBM 1990) and Curators of the University of Missouri,

though, the Union is not proposing a pure DPW unit. While the Union has included most of the DPW employees in their proposed unit, it has not included all of them. In point of fact, it excludes the engineering department which clearly is part of the DPW. The significance of this proposed exclusion is that it means that the Union is not seeking a wall-to-wall DPW unit. In addition to seeking the exclusion of one small part of the DPW from their proposed unit, the Union also seeks to include several individuals from outside the DPW in the unit. Specifically, it seeks the inclusion of the warehouse/invoice clerk and the two meter readers. With regard to the former (i.e. the warehouse/invoice clerk) the Union does this by including the term “warehouse” in its unit description language after the “electric” department and before the “water” department. By listing it in this fashion (i.e. “electric, warehouse, water . . .”) the Union includes the “warehouse” department in the DPW. The problem with this is that the warehouse department is not part of the DPW; it’s part of City hall. As for the meter readers, the Union’s proposed unit description is silent concerning same. They are not named inclusions even though the Union clearly wants them (i.e. the meter readers) included. In our view, this was no mere oversight. If the meter readers had been named as an inclusion, it would have been apparent that the Union is seeking to bootstrap a couple of non-DPW employees to what it characterizes as a DPW unit. In reality then, the Union’s proposed unit amounts to the DPW minus the engineering department plus three non-DPW employees. When seen in this light, it is apparent that the Union “cherry picked” some employees for inclusion (namely the meter readers and the warehouse/invoicing clerk) and some for exclusion (namely the three engineering department employees). These flaws undermine the appropriateness of the Union’s proposed unit and result in it not passing muster.

Having just identified the flaws in the Union’s proposed unit, attention is now turned to the City’s proposed unit. The City would include “all similarly situated employees” in the bargaining unit. However, it never specifically identifies who the “similarly situated” employees would be.



We infer from the record and the City's brief that the City's proposed unit includes the Union's proposed inclusions with the exception of the foremen, plus all the employees in the engineering department and the transit department, the city hall janitor, some employees in the park grounds, golf course and civic center departments, and possibly the meter readers.

In our view, the City's proposed unit is even more of a hybrid than is the Union's. The following shows this. First, although the City's proposed unit starts out cleanly by including all DPW employees (including the engineering department), the City then muddies the water, so to speak, by including some, but not all, of the city hall employees. Specifically, it includes the custodian and possibly the meter readers, but not the warehouse/invoice clerk or other city hall employees. Thus, the City is not proposing a pure DPW/city hall unit. Second, the City includes some employees in its proposed unit who are neither DPW nor city hall employees. We are referring here to the civic center employees and transit drivers. The employees in those two departments are classified as building engineers, groundsman and transit/bus drivers. None of these classifications are found at either the DPW or at city hall. Since the classifications at the civic center and transit department are not similar to those found at the DPW or at city hall, it follows that the civic center and transit department classifications cannot fairly be said to be "similarly situated" to what the Union proposed (namely most of the DPW employees and a few of the city hall employees). Finally, we note that although the City includes some employees of the civic center and park grounds department, it does not include all the employees in those departments. Suffice it to say this is the same type of "cherry picking" of employees that we criticized earlier. Given all the foregoing, we find that the City's proposed unit does not pass muster either.

Having found that neither proposed unit is appropriate, it is necessary for us to construct one that is. The unit which we have constructed consists of all DPW employees and four city hall

employees. This unit can be characterized as a combined DPW and blue collar city hall unit. To begin with, we have included all the DPW employees which the Union included in their proposed unit since both sides essentially agreed on their inclusion. Next, we have included the three DPW engineering department employees in the unit. IN our view, there is no reason for carving them out of the unit as proposed by the Union. Although two of the employees in the engineering department work part time, there are three part time employees in the street department whose inclusion is not questioned by either side. We find that since the two part time employees in the engineering department generally work at least 16 to 20 hours a week, their part time status does not preclude their inclusion in the unit. As for the draftsman in the engineering department, suffice it to say no reason exists which warrants his exclusion either. The inclusion of all the DPW employees in the unit follows the City's own organizational structure. Next, we have included the warehouse/invoice clerk because of his frequent interaction with the DPW employees. Finally, we have also included the two meter readers because they often work outside as do the DPW employees. We have excluded all the other employees which the City sought to include, namely the transit department employees (i.e. the bus drivers), certain park grounds employees, certain golf course employees, and certain civic center employees. Our rationale for not including those employees in the unit is that they have little interaction with either the DPW employees (who constitute the core employee group in the unit) or the city hall employees.

We are well aware that the unit we have constructed above differs from the unit proposed by either side. Thus, it is a unit of our making -- not the parties. Be that as it may, the reason it was necessary for us to do this was because neither side's proposed unit was an appropriate unit. In our view, the unit we have constructed constitutes an appropriate bargaining unit. We believe that the employees which we have included in the unit share a community of interest while those which we have excluded do not share a community of interest with those included.

To summarize, the bargaining unit found appropriate is as follows:

All full time and part time employees in the City of West Plains Public Works Department, as well as the meter readers, the city hall janitor, and the warehouse/invoice clerk, excluding department heads and all other City employees.

The question of whether the DPW foremen are included or excluded from this unit will be addressed next.

### **DISCUSSION CONCERNING SUPERVISORY STATUS**

As just noted, the remaining issue is whether the nine DPW foremen should be included in or excluded from the above-described bargaining unit. The Union contends they should be included while the City wants them excluded.

The Missouri Public Sector Labor Law gives certain employees the right to form and join labor organizations and to present proposals to their employers relative to conditions of employment. Although supervisors are not specifically excluded from the law's coverage, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d(Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Case No. 76-013 (SBM 1976). The rationale for the exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since a dispute exists here as to whether the nine DPW foremen "supervise" the employees on their crew or in their department, it is necessary for us to determine if such is, in fact, the case.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;

- (3) The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.<sup>2</sup>

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.<sup>3</sup>

Applying these criteria to the foremen at issue here, we conclude that none of them meet this supervisory test. Our analysis follows.

Attention is focused initially on factor (1). It is undisputed that the foremen are not empowered to hire, fire, promote or transfer employees on their volition and have not done so. That said, the foremen play a role in evaluating, hiring and disciplining employees. An analysis of their role in those areas follows.

With regard to evaluations, the foremen annually evaluate the members of their crew or department. When the foremen evaluate someone, they complete a preprinted evaluation form which requires them to rate the employee's performance in a variety of areas. The foremen initially complete these evaluations without receiving any input from their department head concerning how they should rate the employee. These completed evaluations then go up the ladder, so to speak, for review. First they go to the department head, who can change it (i.e. the evaluation) if he wants; from him it goes to the DPW director (Davidson), and finally to the city

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<sup>2</sup> See, for example, *City of St. Louis Building Division, Case No. R 96-001 (SBM 1996)*.

<sup>3</sup> See, for example, *Callaway County Ambulance District, Case No. R 96-032 (SBM 1996)*.

administrator (Fugate). These evaluations can affect an employee's wages in two ways. First, if the employee does not receive a numerical score of 33 points (i.e. average), they do not qualify for a yearly pay increase. Second, the evaluations can be used to grant or deny a change in classification status, such as an employee moving from laborer II to laborer III. If an employee's status is changed in this fashion, they move into a higher pay grade and ultimately receive a higher salary. The foremen do not decide though if an employee receives a yearly pay increase or changes classifications; those decisions are made by the city administrator.

With regard to hirings, it has already been noted that foremen do not hire employees on their own authority. That said, some foremen have been consulted in the hiring process. This usually involved the following: After Davidson interviewed the candidates, he (Davidson) asked the applicable foreman if he knew the candidate being considered for employment. When this happened, the foreman has offered an opinion concerning the candidate. The foreman's opinion/recommendation was not binding though. In other words, Davidson was not obligated to follow that recommendation. This establishes that while the foremen may sometimes be consulted by Davidson before he makes a hiring recommendation to the city administrator, the foremen are certainly not an indispensable party in the City's hiring process.

With respect to discipline, it has already been noted that foremen cannot discharge employees. They cannot suspend them either. If a foreman believes an employee's conduct has been inappropriate, their role in the disciplinary process is to report the matter to the department head who, in turn, reports it further up the chain of command. If any discipline (including a written warning) is ultimately imposed on the employee, it would come from the department head and/or the city administrator. This convinces us that foremen play a very minor role in the disciplining of employees.

Attention is now turned to factor (2) above. There is no question that the DPW foremen are in immediate charge of, and oversee, the members of their crews or departments on a day to day basis. They also assign them work on a daily basis. However, the foremen do not usually determine what work is to be performed; that is done by the department head. The work assignments which the foremen then make to their crew members depend on the projects to be performed and the availability of, and the skills of, individual crew members. In our view, the assignment of work involved here is of a routine nature and does not involve more than limited independent judgment.

As to factor (3), the crew which each foreman oversees is between two to nine workers. There is just one nine-man crew; the rest of the crews are half that size or less, with several being two-men crews. In our opinion, responsibility for crews of these sizes do not suggest supervisory status. The evidence on the second part of the third factor (i.e. the number of other persons exercising greater, similar or lesser authority with respect to the same employees) demonstrated that in the DPW, there are two layers of authority over the foremen, namely the department head and then the director of the Public Work Department (Davidson). As a practical matter, both can exercise more authority over the DPW employees than the foremen can. Thus, the foremen are at the bottom end of the DPW's managerial hierarchy. We believe this establishes that the foremen's effective control over their crew or department members is minimal and routine.

With regard to the level of pay (factor 4), the evidence shows that foremen are salaried whereas their crew members are not. While the City contends that the foremen's salaried status is an important indicia of their supervisory status, we believe that the fact that someone is paid a yearly salary, as opposed to an hourly wage, means little. What is more significant in our view is the dollar spread between them. For example, in the electric department, the spread between the

foremen's pay and the highest crew member's pay is almost \$4 an hour. At the cemetery, it is even greater--almost \$6 an hour. However in the water and sewer departments, the spread between the foremen's pay and the highest crew member's pay is less than \$1. All but one of the foremen are paid more than the workers they oversee. The exception is in the street department where one employee makes 40 cents an hour more than the foreman. The situation in the street department establishes that due to the way all the hourly pay grades are structured with ranges, it is indeed possible for senior crew members or employees who are at the top of their pay grade to be paid more than a foreman.

Finally, with regard to factors (5) and (6), the record establishes that foremen are responsible for checking the work done by the employees they oversee to ensure that it (i.e. the work) is performed correctly. They do this by working on site with those employees. They work side-by-side with them doing the same hands-on work, and operating the same machines and equipment. The foremen spend between 25% to 90% of their time doing the same hands-on work as their crew or department members perform. The 25% figure applies to just one foreman (Barks), while the 90% figure applies to the other eight foremen. Since most of the foremen spend practically all of the workday doing the same work as the employees they oversee, we are persuaded that the primary function of the foremen is to serve as leadmen overseeing the performance of work; not supervising those employees for labor relations purposes.

To summarize then, the record indicates that the DPW foremen are valued senior employees in their departments who perform a number of supervisory functions. Specifically, they are in charge of their crew on a daily basis, assign them work and monitor their work performance, and annually conduct performance evaluations of the employees on their crew. However, the factors just listed are not enough to qualify them as supervisors. Overall, they do

not exercise sufficient supervisory authority in such combination and degree to make them supervisors. We therefore conclude that in this specific case, the foremen are not supervisors.

### **ORDER**

It is the decision of the State Board of Mediation that the nine DPW foremen are not supervisory employees. They are therefore included in the bargaining unit found appropriate.

The formal description of that unit is as follows:

All full time and part time employees in the City of West Plains Public Works Department including all DPW foremen, as well as the meter readers, the city hall janitor, and the warehouse/invoice clerk, excluding department heads and all other City employees.

An election is ordered therein.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have International Brotherhood of Electrical Workers, Local 753 as their exclusive bargaining representative.

The City shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen calendar days from the date of this decision, an alphabetical list of names



and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 2nd day of September, 1997.

STATE BOARD OF MEDIATION

/s/ Francis R. Brady  
Francis R. Brady, Chairman

/s/ LeRoy Kraemer  
LeRoy Kraemer, Employee Member

(SEAL)

/s/ Linda Cooper  
Linda Cooper, Employer Member